

SUBCHAPTER L—INTERNAL AND ADMINISTRATIVE RULES AND PROCEDURES

PART 4901—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

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Subpart A—General

§ 4901.1 Purpose and scope.

This part contains the general rules of the PBGC implementing the Freedom of Information Act. This part sets forth generally the categories of records accessible to the public, the

types of records subject to prohibitions or restrictions on disclosure, and the procedure whereby members of the public may obtain access to and inspect and copy information from records in the custody of the PBGC.

§ 4901.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part—

Agency, person, party, rule, rule-making, order, and adjudication have the meanings attributed to these terms by the definitions in 5 U.S.C. 551, except where the context demonstrates that a different meaning is intended, and except that for purposes of the Freedom of Information Act the term agency as defined in 5 U.S.C. 551 includes any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President) or any independent regulatory agency.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Working day means any weekday excepting Federal holidays.

[61 FR 34123, July 1, 1996, as amended at 74 FR 27081, June 8, 2009]

§ 4901.3 Disclosure facilities.

(a) *Public reference room.* The PBGC will maintain a public reference room in its offices located at 1200 K Street NW., Washington, DC 20005-4026, wherein persons may inspect and copy all records made available for such purposes under this part.

(b) *No withdrawal of records.* No person may remove any record made available for inspection or copying under this part from the place where it is made available except with the written consent of the General Counsel of the PBGC.

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§ 4901.4 Information maintained in public reference room.

The PBGC shall make available in its public reference room for inspection and copying without formal request—

(a) *Information published in the FEDERAL REGISTER.* Copies of FEDERAL REGISTER documents published by the PBGC, and copies of FEDERAL REGISTER indexes;

(b) *Information in PBGC publications.* Copies of informational material, such as press releases, pamphlets, and other material ordinarily made available to the public without cost as part of a public information program;

(c) *Rulemaking proceedings.* All papers and documents made a part of the official record in administrative proceedings conducted by the PBGC in connection with the issuance, amendment, or revocation of rules and regulations or determinations having general applicability or legal effect with respect to members of the public or a class thereof (with a register being kept to identify the persons who inspect the records and the times at which they do so);

(d) Except to the extent that deletion of identifying details is required to prevent a clearly unwarranted invasion of personal privacy (in which case the justification for the deletion shall be fully explained in writing)—

(1) *Adjudication proceedings.* Final opinions, orders, and (except to the extent that an exemption provided by FOIA must be asserted in the public interest to prevent a clearly unwarranted invasion of personal privacy or violation of law or to ensure the proper discharge of the functions of the PBGC) other papers and documents made a part of the official record in adjudication proceedings conducted by the PBGC,

(2) *Policy statements and interpretations.* Statements of policy and interpretations affecting a member of the public which have been adopted by the PBGC and which have not been published in the FEDERAL REGISTER, and

(3) *Staff manuals and instructions.* Administrative staff manuals and instructions to staff issued by the PBGC that affect any member of the public, and

(e) *Indexes to certain records.* Current indexes (updated at least quarterly)

identifying materials described in paragraph (a)(2) of FOIA and paragraph (d) of this section.

§ 4901.5 Disclosure of other information.

(a) *In general.* Upon the request of any person submitted in accordance with subpart B of this part, the disclosure officer shall make any document (or portion thereof) from the records of the PBGC in the custody of any official of the PBGC available for inspection and copying unless exempt from disclosure under the provisions of subsection (b) of FOIA and subpart C of this part. The subpart B procedures must be used for records that are not made available in the PBGC's public reference room under § 4901.4 and may be used for records that are available in the public reference room. Records that could be produced only by manipulation of existing information (such as computer analyses of existing data), thus creating information not previously in being, are not records of the PBGC and are not required to be furnished under FOIA.

(b) *Discretionary disclosure.* Notwithstanding the applicability of an exemption under subsection (b) of FOIA and subpart C of this part (other than an exemption under paragraph (b)(1) or (b)(3) of FOIA and § 4901.21 (a)(2) and (a)(3)), the disclosure officer may (subject to 18 U.S.C. 1905 and § 4901.21(a)(1)) make any document (or portion thereof) from the records of the PBGC available for inspection and copying if the disclosure officer determines that disclosure furthers the public interest and does not impede the discharge of any of the functions of the PBGC.

§ 4901.6 Filing rules; computation of time.

(a) *Filing rules—(1) Where to file.* See § 4000.4 of this chapter for information on where to file a submission under this part with the PBGC.

(2) *Method of filing.* The PBGC applies the rules in subpart A of part 4000 of this chapter to determine permissible methods of filing with the PBGC under this part.

(3) *Date of filing.* The PBGC applies the rules in subpart C of part 4000 of this chapter to determine the date that

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a submission under this part was filed with the PBGC.

(b) *Computation of time.* The PBGC applies the rules in subpart D of part 4000 of this chapter to compute any time period under this part.

[68 FR 61358, Oct. 28, 2003]

Subpart B—Procedure for Formal Requests

§ 4901.11 Submittal of requests for access to records.

A request to inspect or copy any record subject to this subpart shall be submitted to the Disclosure Officer, Pension Benefit Guaranty Corporation. Such a request may be sent to the Disclosure Officer or made in person between the hours of 9 a.m. and 4 p.m. on any working day in the Office of the General Counsel, PBGC, 1200 K Street, NW., Suite 11101, Washington, DC 20005–4026. To expedite processing, the request should be prominently identified as a “FOIA request.”

[68 FR 61358, Oct. 28, 2003, as amended at 74 FR 27081, June 8, 2009]

§ 4901.12 Description of information requested.

(a) *In general.* Each request should reasonably describe the record or records sought in sufficient detail to permit identification and location with a reasonable amount of effort. So far as practicable, the request should specify the subject matter of the record, the place where and date or approximate date when made, the person or office that made it, and any other pertinent identifying details.

(b) *Deficient descriptions.* If the description is insufficient to enable a professional employee familiar with the subject area of the request to locate the record with a reasonable amount of effort, the disclosure officer will notify the requester and, to the extent possible, indicate the additional information required. Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought. Records will not be withheld merely because it is difficult to find them.

(c) *Requests for categories of records.* Requests calling for all records falling

within a reasonably specific category will be regarded as reasonably described within the meaning of this section and paragraph (a)(3) of FOIA if the PBGC is reasonably able to determine which records come within the request and to search for and collect them without unduly interfering with PBGC operations. If PBGC operations would be unduly disrupted, the disclosure officer shall promptly notify the requester and provide an opportunity to confer in an attempt to reduce the request to manageable proportions.

§ 4901.13 Receipt by agency of request.

The disclosure officer shall note the date and time of receipt on each request for access to records. A request shall be deemed received and the period within which action on the request shall be taken, as set forth in § 4901.14 of this part, shall begin on the next business day following such date, except that a request shall be deemed received only if and when the PBGC receives—

(a) A sufficient description under § 4901.12;

(b) Payment or assurance of payment if required under § 4901.33(b); and

(c) The requester’s consent to pay substantial search, review, and/or duplication charges under subpart D of this part if the PBGC determines that such charges may be substantial and so notifies the requester. Consent may be in the form of a statement that costs under subpart D will be acceptable either in any amount or up to a specified amount. To avoid possible delay, a requester may include such a statement in a request.

§ 4901.14 Action on request.

(a) *Time for action.* Promptly and in any event within 10 working days after receipt of a disclosure request (subject to extension under § 4901.16), the disclosure officer shall take action with respect to each requested item (or portion of an item) under either paragraph (b), (c), or (d) of this section.

(b) *Request granted.* If the disclosure officer determines that the request should be granted, the requester shall be so advised and the records shall be promptly made available to the requester.

(c) *Request denied.* If the disclosure officer determines that the request should be denied, the requester shall be so advised in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial and an explanation of how each such exemption applies to the matter withheld. The denial shall also include the name and title or position of the person(s) responsible for the denial and outline the appeal procedure available.

(d) *Records not promptly located.* As to records that are not located in time to make an informed determination, the disclosure officer may deny the request and so advise the requester in writing with an explanation of the circumstances. The denial shall also include the name and title or position of the person(s) responsible for the denial, outline the appeal procedure available, and advise the requester that the search or examination will be continued and that the denial may be withdrawn, modified, or confirmed when processing of the request is completed.

§4901.15 Appeals from denial of requests.

(a) *Submittal of appeals.* If a disclosure request is denied in whole or in part by the disclosure officer, the requester may file a written appeal within 30 days from the date of the denial or, if later (in the case of a partial denial), 30 days from the date the requester receives the disclosed material. The appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation. See §4000.4 of this chapter for information on where to file. To expedite processing, the words “FOIA appeal” should appear prominently on the request.

(b) *Receipt and consideration of appeal.* The General Counsel shall note the date and time of receipt on each appeal and notify the requester thereof. Promptly and in any event within 20 working days after receipt of an appeal (subject to extension under §4901.16), the General Counsel shall issue a decision on the appeal.

(1) The General Counsel may determine de novo whether the denial of dis-

closure was in accordance with FOIA and this part.

(2) If the denial appealed from was under §4901.14(d), the General Counsel shall consider any supplementary determination by the disclosure officer in deciding the appeal.

(3) Unless otherwise ordered by the court, the General Counsel may act on an appeal notwithstanding the pendency of an action for judicial relief in the same matter and, if no appeal has been filed, may treat such an action as the filing of an appeal.

(c) *Decision on appeal.* As to each item (or portion of an item) whose nondisclosure is appealed, the General Counsel shall either—

(1) Grant the appeal and so advise the requester in writing, in which case the records with respect to which the appeal is granted shall be promptly made available to the requester; or

(2) Deny the appeal and so advise the requester in writing with a brief statement of the reasons for the denial, including a reference to the specific exemption(s) authorizing the denial, an explanation of how each such exemption applies to the matter withheld, and notice of the provisions for judicial review in paragraph (a)(4) of FOIA. The General Counsel’s decision shall be the final action of the PBGC with respect to the request.

(d) *Records of appeals.* Copies of both grants and denials of appeals shall be collected in one file available in the PBGC’s public reference room under §4901.4(d)(1) and indexed under §4901.4(e).

[61 FR 34123, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003]

§4901.16 Extensions of time.

In unusual circumstances (as described in subparagraph (a)(6)(B) of FOIA), the time to respond to a disclosure request under §4901.14(a) or an appeal under §4901.15(b) may be extended as reasonably necessary to process the request or appeal. The disclosure officer (with the prior approval of the General Counsel) or the General Counsel, as appropriate, shall notify the requester in writing within the original time period of the reasons for the extension and the date when a response is

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expected to be sent. The maximum extension for responding to a disclosure request shall be 10 working days, and the maximum extension for responding to an appeal shall be 10 working days minus the amount of any extension on the request to which the appeal relates.

§ 4901.17 Exhaustion of administrative remedies.

If the disclosure officer fails to make a determination to grant or deny access to requested records, or the General Counsel does not make a decision on appeal from a denial of access to PBGC records, within the time prescribed (including any extension) for making such determination or decision, the requester's administrative remedies shall be deemed exhausted and the requester may apply for judicial relief under FOIA. However, since a court may allow the PBGC additional time to act as provided in FOIA, processing of the request or appeal shall continue and the requester shall be so advised.

Subpart C—Restrictions on Disclosure

§ 4901.21 Restrictions in general.

(a) *Records not disclosable.* Records shall not be disclosed to the extent prohibited by—

(1) 18 U.S.C. 1905, dealing in general with commercial and financial information;

(2) Paragraph (b)(1) of FOIA, dealing in general with matters of national defense and foreign policy; or

(3) Paragraph (b)(3) of FOIA, dealing in general with matters specifically exempted from disclosure by statute, including information or documentary material submitted to the PBGC pursuant to sections 4010 and 4043 of ERISA.

(b) *Records disclosure of which may be refused.* Records need not (but may, as provided in § 4901.5(b)) be disclosed to the extent provided by—

(1) Paragraph (b)(2) of FOIA, dealing in general with internal agency personnel rules and practices;

(2) Paragraph (b)(4) of FOIA, dealing in general with trade secrets and commercial and financial information;

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(3) Paragraph (b)(5) of FOIA, dealing in general with inter-agency and intra-agency memoranda and letters;

(4) Paragraph (b)(6) of FOIA, dealing in general with personnel, medical, and similar files;

(5) Paragraph (b)(7) of FOIA, dealing in general with records or information compiled for law enforcement purposes;

(6) Paragraph (b)(8) of FOIA, dealing in general with reports on financial institutions; or

(7) Paragraph (b)(9) of FOIA, dealing in general with information about wells.

§ 4901.22 Partial disclosure.

If an otherwise disclosable record contains some material that is protected from disclosure, the record shall not for that reason be withheld from disclosure if deletion of the protected material is feasible. This principle shall be applied in particular to identifying details the disclosure of which would constitute an unwarranted invasion of personal privacy.

§ 4901.23 Record of concern to more than one agency.

If the release of a record in the custody of the PBGC would be of concern not only to the PBGC but also to another Federal agency, the record will be made available by the PBGC only if its interest in the record is the primary interest and only after coordination with the other interested agency. If the interest of the PBGC in the record is not primary, the request will be transferred promptly to the agency having the primary interest, and the requester will be so notified.

§ 4901.24 Special rules for trade secrets and confidential commercial or financial information submitted to the PBGC.

(a) *Application.* To the extent permitted by law, this section applies to a request for disclosure of a record that contains information that has been designated by the submitter in good faith in accordance with paragraph (b) of this section or a record that the PBGC has reason to believe contains such information, unless—

(1) Access to the information is denied;

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(2) The information has been published or officially made available to the public;

(3) Disclosure of the information is required by law other than FOIA; or

(4) The designation under paragraph (b) of this section appears obviously frivolous, except that in such a case the PBGC will notify the submitter in writing of a determination to disclose the information within a reasonable time before the disclosure date (which shall be specified in the notice).

(b) *Designation by submitter.* To designate information as being subject to this section, the submitter shall, at the time of submission or by a reasonable time thereafter, assert that information being submitted is confidential business information and designate, with appropriate markings, the portion(s) of the submission to which the assertion applies. Any designation under this paragraph shall expire 10 years after the date of submission unless a longer designation period is requested and reasonable justification is provided therefor.

(c) *Notification to submitter of disclosure request.* When disclosure of information subject to this section may be made, the disclosure officer or (where disclosure may be made in response to an appeal) the General Counsel shall promptly notify the submitter, describing (or providing a copy of) the information that may be disclosed, and afford the submitter a reasonable period of time to object in writing to the requested disclosure. (The notification to the submitter may be oral or written; if oral, it will be confirmed in writing.) When a submitter is notified under this paragraph, the requester shall be notified that the submitter is being afforded an opportunity to object to disclosure.

(d) *Objection of submitter.* A submitter's statement objecting to disclosure should specify all grounds relied upon for opposing disclosure of any portion(s) of the information under subsection (b) of FOIA and, with respect to the exemption in paragraph (b)(4) of FOIA, demonstrate why the information is a trade secret or is commercial or financial information that is privileged or confidential. Facts asserted should be certified or otherwise sup-

ported. (Information provided pursuant to this paragraph may itself be subject to disclosure under FOIA.) Any timely objection of a submitter under this paragraph shall be carefully considered in determining whether to grant a disclosure request or appeal.

(e) *Notification to submitter of decision to disclose.* If the disclosure officer or (where disclosure is in response to an appeal) the General Counsel decides to disclose information subject to this section despite the submitter's objections, the disclosure officer (or General Counsel) shall give the submitter written notice, explaining briefly why the information is to be disclosed despite those objections, describing the information to be disclosed, and specifying the date when the information will be disclosed to the requester. The notification shall, to the extent permitted by law, be provided a reasonable number of days before the disclosure date so specified, and a copy shall be provided to the requester.

(f) *Notification to submitter of action to compel disclosure.* The disclosure officer or the General Counsel shall promptly notify the submitter if a requester brings suit seeking to compel disclosure.

Subpart D—Fees

§4901.31 Charges for services.

(a) *Generally.* Pursuant to the provisions of FOIA, as amended, charges will be assessed to cover the direct costs of searching for, reviewing, and/or duplicating records requested under FOIA from the PBGC, except where the charges are limited or waived under paragraph (b) or (d) of this section, according to the fee schedule in §4901.32 of this part. No charge will be assessed if the costs of routine collection and processing of the fee would be equal to or greater than the fee itself.

(1) *Direct costs* means those expenditures which the PBGC actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a request under FOIA and this part. Direct costs include, for example, the salary of the employee performing work (*i.e.*, the basic rate of pay plus benefits) or

an established average pay for a homogeneous class of personnel (e.g., all administrative/clerical or all professional/executive), and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* means all time spent looking for material that is responsive to a request under FOIA and this part, including page-by-page or line-by-line identification of materials within a document, if required, and may be done manually or by computer using existing programming. “Search” should be distinguished from “review” which is defined in paragraph (a)(3) of this section.

(3) *Review* means the process of examining documents located in response to a request under FOIA and this part to determine whether any portion of any document located is permitted or required to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(4) *Duplication* means the process of making a copy of a document necessary to respond to a request under FOIA and this part, in a form that is reasonably usable by the requester. Copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(b) *Categories of requesters.* Requesters who seek access to records under FOIA and this part are divided into four categories: commercial use requesters, educational and noncommercial scientific institutions, representatives of the news media, and all other requesters. The PBGC will determine the category of a requester and charge fees according to the following rules.

(1) *Commercial use requesters.* When records are requested for commercial use, the PBGC will assess charges, as provided in this subpart, for the full direct costs of searching for, reviewing for release, and duplicating the records sought. Fees for search and review may

be charged even if the record searched for is not found or if, after it is found, it is determined that the request to inspect it may be denied under the provisions of subsection (b) of FOIA and this part.

(i) “*Commercial use*” request means a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made.

(ii) In determining whether a request properly belongs in this category, the PBGC will look to the use to which a requester will put the documents requested. Moreover, where the PBGC has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, the PBGC will require the requester to provide clarification before assigning the request to this category.

(2) *Educational and noncommercial scientific institution requesters.* When records are requested by an educational or noncommercial scientific institution, the PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(ii) *Noncommercial scientific institution* means an institution that is not operated on a “commercial” basis as that term is defined in paragraph (b)(1)(i) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(iii) To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the

records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a noncommercial scientific institution) research.

(3) *Requesters who are representatives of the news media.* When records are requested by representatives of the news media, the PBGC will assess charges, as provided in this subpart, for the full direct cost of duplication only, excluding charges for the first 100 pages.

(i) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term *news* means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of “news”) who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. “Freelance” journalists may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it.

(ii) To be eligible for inclusion in this category, the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester who is a representative of the news media shall not be considered to be a request that is for a commercial use.

(4) *All other requesters.* When records are requested by requesters who do not fit into any of the categories in paragraphs (b)(1) through (b)(3) of this section, the PBGC will assess charges, as provided in this subpart, for the full direct cost of searching for and duplicating the records sought, with the exceptions that there will be no charge for the first 100 pages of duplication and the first two hours of manual search time (or its cost equivalent in computer search time). Notwithstanding the preceding sentence, there will be no charge for search time in the

event of requests under the Privacy Act of 1974 from subjects of records filed in the PBGC’s systems of records for the disclosure of records about themselves. Search fees, where applicable, may be charged even if the record searched for is not found.

(c) *Aggregation of requests.* If the PBGC reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the PBGC will aggregate any such requests and charge accordingly. In no case will the PBGC aggregate multiple requests on unrelated subjects from one requester.

(d) *Waiver or reduction of charges.* Circumstances under which searching, review, and duplication facilities or services may be made available to the requester without charge or at a reduced charge are set forth in § 4901.34 of this part.

§ 4901.32 Fee schedule.

(a) *Charges for searching and review of records.* Charges applicable under this subpart to the search for and review of records will be made according to the following fee schedule:

(1) *Search and review time.* (i) Ordinary search and review by custodial or clerical personnel, \$1.75 for each one-quarter hour or fraction thereof of employee worktime required to locate or obtain the records to be searched and to make the necessary review; and (ii) search or review requiring services of professional or supervisory personnel to locate or review requested records, \$4.00 for each one-quarter hour or fraction thereof of professional or supervisory personnel worktime.

(2) *Additional search costs.* If the search for a requested record requires transportation of the searcher to the location of the records or transportation of the records to the searcher, at a cost in excess of \$5.00, actual transportation costs will be added to the search time cost.

(3) *Search in computerized records.* Charges for information that is available in whole or in part in computerized form will include the cost of operating the central processing unit (CPU) for that portion of operating time that

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is directly attributable to searching for records responsive to the request, personnel salaries apportionable to the search, and tape or printout production or an established agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches. Charges will be computed at the rates prescribed in paragraphs (a) and (b) of this section.

(b) *Charges for duplication of records.* Charges applicable under this subpart for obtaining requested copies of records made available for inspection will be made according to the following fee schedule and subject to the following conditions.

(1) *Standard copying fee.* \$0.15 for each page of record copies furnished. This standard fee is also applicable to the furnishing of copies of available computer printouts as stated in paragraph (a)(3) of this section.

(2) *Voluminous material.* If the volume of page copy desired by the requester is such that the reproduction charge at the standard page rate would be in excess of \$50, the person desiring reproduction may request a special rate quotation from the PBGC.

(3) *Limit of service.* Not more than 10 copies of any document will be furnished.

(4) *Manual copying by requester.* No charge will be made for manual copying by the requesting party of any document made available for inspection under the provisions of this part. The PBGC shall provide facilities for such copying without charge at reasonable times during normal working hours.

(5) *Indexes.* Pursuant to paragraph (a)(2) of FOIA copies of indexes or supplements thereto which are maintained as therein provided but which have not been published will be provided on request at a cost not to exceed the direct cost of duplication.

(c) *Other charges.* The scheduled fees, set forth in paragraphs (a) and (b) of this section, for furnishing records made available for inspection and duplication represent the direct costs of furnishing the copies at the place of duplication. Upon request, single copies of the records will be mailed, postage prepaid, free of charge. Actual costs of transmitting records by special methods such as registered, certified,

or special delivery mail or messenger, and of special handling or packaging, if required, will be charged in addition to the scheduled fees.

§ 4901.33 Payment of fees.

(a) *Medium of payment.* Payment of the applicable fees as provided in this subsection shall be made in cash, by U.S. postal money order, or by check payable to the PBGC. Postage stamps will not be accepted in lieu of cash, checks, or money orders as payment for fees specified in the schedule. Cash should not be sent by mail.

(b) *Advance payment or assurance of payment.* Payment or assurance of payment before work is begun or continued on a request may be required under the following rules.

(1) Where the PBGC estimates or determines that charges allowable under the rules in this subpart are likely to exceed \$250, the PBGC may require advance payment of the entire fee or assurance of payment, as follows:

(i) Where the requester has a history of prompt payment of fees under this part, the PBGC will notify the requester of the likely cost and obtain satisfactory assurance of full payment; or

(ii) Where the requester has no history of payment for requests made pursuant to FOIA and this part, the PBGC may require the requester to make an advance payment of an amount up to the full estimated charges.

(2) Where the requester has previously failed to pay a fee charged in a timely fashion (*i.e.*, within 30 days of the date of the billing), the PBGC may require the requester to pay the full amount owed plus any applicable interest as provided in paragraph (c) of this section (or demonstrate that he has, in fact, paid the fee) and to make an advance payment of the full amount of the estimated fee.

(c) *Late payment interest charges.* The PBGC may assess late payment interest charges on any amounts unpaid by the 31st day after the date a bill is sent to a requester. Interest will be assessed at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date the bill is sent.

[61 FR 34123, July 1, 1996, as amended at 68 FR 61358, Oct. 28, 2003]

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§ 4901.34 Waiver or reduction of charges.

(a) The disclosure officer may waive or reduce fees otherwise applicable under this subpart when disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. A fee waiver request shall set forth full and complete information upon which the request for waiver is based.

(b) The disclosure officer may reduce or waive fees applicable under this subpart when the requester has demonstrated his inability to pay such fees.

PART 4902—DISCLOSURE AND AMENDMENT OF RECORDS PERTAINING TO INDIVIDUALS UNDER THE PRIVACY ACT

Sec.

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AUTHORITY: 5 U.S.C. 552a.

SOURCE: 61 FR 34128, July 1, 1996, unless otherwise noted.

§ 4902.1 Purpose and Scope.

(a) *Procedures.* Sections 4902.3 through 4902.7 establish procedures under which—

(1) An individual may—

(i) Determine whether PBGC maintains any system of records that contains a record pertaining to the individual;

(ii) Obtain access to the individual's record upon request;

(iii) Make a request to amend the individual's record; and

(iv) Appeal a denial of a request to amend the individual's record; and

(2) PBGC will make an initial determination of a request to amend an individual's record.

(b) *Fees.* Section 4902.8 prescribes the fees for making copies of an individual's record.

(c) *Privacy Act provisions.* Section 4902.9 summarizes the Privacy Act (5 U.S.C. 552a) provisions for which PBGC claims an exemption for certain systems of records.

(d) *Exemptions.* Sections 4902.10 through 4902.11 set forth those systems of records that are exempted from certain disclosure and other provisions of the Privacy Act, and the reasons for the exemptions.

[74 FR 27081, June 8, 2009]

§ 4902.2 Definitions.

In addition to terminology in part 4001 of this chapter, as used in this part:

Record means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.

System of records means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Working day means any weekday excepting Federal holidays.

[61 FR 34128, July 1, 1996, as amended at 74 FR 27081, June 8, 2009]

§ 4902.3 Procedures for determining existence of and requesting access to records.

(a) Any individual may submit a request to the Disclosure Officer, Pension Benefit Guaranty Corporation, for the